



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22VAC40-740
<b>Regulation title</b>	Adult Protective Services
<b>Action title</b>	Amend Adult Protective Services
<b>Date this document prepared</b>	August 17, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

Changes to 22VAC40-740 (1) clarify regulation content that may be confusing or unclear; (2) comport regulation text with guidance on the data entry requirements in ASAPS, the adult services/adult protective services system; 3) adds a review by the Commissioner's designee of the request to impose a civil penalty and (4) adds a new section to address notifications to alleged perpetrators and the right of the perpetrator to request a review of the LDSS's investigation findings results in one of the following dispositions: needs protective services and accepts, needs protective services and refuses or need for protective services no longer exists.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

APS-Adult Protective Services

ASAPS-the state Adult Services/Adult Protective Services Web-based case management and reporting system

DSS-Department of Social Services

LDSS-Local Department of Social Services

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Sections 63.2-217 and 63.2-1603 through 1610 of the Code of Virginia provide the legal basis for this regulation. These sections provide general authority for the development of regulations for program operation and authority for the APS Program. The State Board of Social Services is the promulgating entity.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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This regulatory action amends and provides a general review of 22VAC40-740, Adult Protective Services. 22VAC40-740 establishes standards for APS investigations and the provision of services after an investigation has been completed. It also provides guidance for mandated reporting of adult abuse, neglect and exploitation and the process for imposing a civil penalty on mandated reporters for failure to report. The regulation also addresses when and to whom APS information may be disclosed. The regulation ensures consistent definitions and actions are used for reporting adult abuse, neglect and exploitation, for receiving and investigating those reports as well as during the provision of services to adults.

The proposed regulatory action is necessary to ensure that regulation content appropriately defines terms used throughout the regulation, clearly addresses APS investigations and service provision and outlines the process for the imposition of a civil penalty. Clarity in the APS regulation content helps APS workers meet the adults' safety and welfare needs throughout APS investigations and during the provision of services.

Proposed changes to the regulation also provide the opportunity for an alleged perpetrator to request a review of the LDSS's investigation findings when the disposition is needs protective services and accepts, needs protective services and refuses or need for protective services no longer exists. These changes ensure that alleged perpetrators are guaranteed due process.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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Many of the proposed changes are technical, such as removing outdated or inaccurate definitions or guidance. Regulation content was also clarified to comport with requirements regarding ASAPS data entry requirements. The section addressing the imposition of a civil penalty was clarified to provide

improved guidance for LDSS director and more thoroughly explain how a mandated reporter may appeal a decision to impose a civil penalty. In addition, a review by the Commissioner’s designee of the request to impose a civil penalty was added. A right of review of the LDSS’s investigative findings, which may be requested by the alleged perpetrator, was added. Regulation content describing the right to review was added to ensure the alleged perpetrator has a right to due process.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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- (1) Amendments to the regulation content ensure that the needs of elderly individuals and adults with disabilities are met during APS investigations and service provision. Amendments to the section addressing civil penalties clarify the process and more thoroughly explain that the responsibilities of individuals involved in the imposition of a civil penalty.
  - (2) Most of the amendments to the regulation clarify, but do not increase LDSS staffs’ responsibilities as amendments comport with current DSS guidance on entering APS information into ASAPS. However the addition of a review hearing for the perpetrator will require additional time on behalf of the LDSS staff and director to prepare for and to conduct the right to review hearing.

The regulatory action poses no disadvantages to the public.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no federal requirements that address adult protective services.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

Larger LDSS that have more APS reports, and thereby more dispositions of needs protective services and accepts, needs protective services and refuses or need for protective services no longer exists, would possibly have to conduct more reviews.

The majority of the changes to the regulation address statewide uniform standards for APS workers who must adhere to these standards without regard to locality.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to **Paige McCleary, Adult Services Program Consultant, 801 East Main Street, Richmond, VA 23219; [paige.mccleary@dss.virginia.gov](mailto:paige.mccleary@dss.virginia.gov); or 804-726-7895 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

The proposed changes were drafted with the assistance of the following assessment regulation workgroup members: Jean Pearson, Social Worker, Greene DSS; Tricia Suszynski, Senior Social Worker, Albemarle DSS; Lauren Leatherman, Social Work Supervisor, Fairfax DSS; Kathryn Knoeller, Social Work Supervisor, Westmoreland DSS; Deronda Brightwell, Social Worker, Campbell DSS; Susan Rosser Jones, Social Work Supervisor, Campbell DSS; Vesna Farrar, Social Worker, Campbell DSS; Mittie Wallace, Program Manager, Fauquier DSS; Cindy Giles, Senior Social Worker, Fauquier DSS; Latarsha Harris, Social Worker, Newport News DSS; Lisa Furr, Project Coordinator, Central Virginia Task Force on Domestic Violence in Later Life, Virginia Center on Aging; Anne See, Elderly Services Paralegal, Blue Ridge Legal Services; Margie Marker, Adult Services Regional Specialist and Paige McCleary, DSS Adult Services Program Consultant; Tishaun Harris-Ugworji, DSS Adult Services Program Consultant; Phyl Parrish, DSS Legislation, Regulation and Policy Program Manager; and Gail Nardi, DSS Adult Services Program Manager.

A public hearing will not be held.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>The proposed changes to the regulation would cause DSS a minimal impact in the following:</p> <ul style="list-style-type: none"> <li>• DSS staff updates to regulation citations in the Adult Services Program Manual. Manual changes would be announced via broadcast on the DSS intranet.</li> </ul>
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	<ul style="list-style-type: none"> <li>• DSS staff assisting DSS trainers in incorporating proposed regulation changes into the course curriculum, such as New Worker Training. Adult Protective Services training courses have been taught for several years and utilize course materials that would require minor updates.</li> <li>• DSS staff updating information about adult protective services on the DSS intranet and public website.</li> </ul> <p>The addition of the right to review process would cause DSS a larger fiscal impact. It is estimated that the right to review would cost DSS .845% of 143,902 or \$121,597.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations on localities.</i></b></p>	<p>LDSS would experience minimal impact as a result of the regulation changes. Proposed changes to Section 80 require the local department director to send a letter notifying the mandated reporter of the director's intent to request that a civil penalty be imposed via certified mail, return receipt requested. Certified mail service costs approximately \$3.00 and return receipt requested service costs approximately \$2.00. Even with potential increases in postal rates, an LDSS that makes two requests a year would be responsible for mailing charges under \$15.00 a year. If there are two mandated reporters in one case that failed to report, each mandated reporter would have to receive a letter from the local director.</p> <p>Since 2007, local directors have made fewer than 10 requests to impose a civil penalty.</p> <p>The right to review hearing would require LDSS staff and local director time to prepare for and conduct the hearing.</p> <p>LDSS would experience a financial impact as a result of the addition of the review process. In state fiscal year (SFY) 2010, there were over 8,700 APS reports with a disposition of needs protective services and accepts, needs protective services and refuses and need for protective services no longer exists. Over 5,600 of these reports represent self-neglect in which the elderly or incapacitated adult is himself the perpetrator. It is unlikely that individuals would appeal the disposition.</p> <p>However, approximately 3,100 APS reports involve abuse, neglect or exploitation perpetrated by another individual, who may request a review hearing. In SFY 2010, approximately 11% of founded Child Protective Services underwent a</p>

	<p>local conference review. Therefore it is estimated that 11% or 341 APS reports would undergo a review hearing.</p> <p>It is estimated that the addition of the right to review process to the APS regulations would be a total ongoing statewide cost of \$143,902. This figure represents LDSS staffs preparation time for the review and the actual hearing process for 341 annual reviews. It also includes mailing costs associated with new requirement. LDSS would share .155% of this cost (\$22,304).</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The regulation impacts mandated reporters of adult abuse, neglect and exploitation; LDSS APS workers, supervisors and directors; elderly or disabled individuals who are the subject of APS reports and investigations and who receive services and these individuals' family members or representatives; and alleged perpetrators of adult abuse, neglect or exploitation.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 120 LDSS with APS workers who conduct APS investigations.</p> <p>In SFY 2010, there were 17,141 APS reports. 14,750 of these reports were investigated and 8,752 had a disposition of needs protective services and accepts, needs protective services and refuses or need for protective services no longer exists. 4,466 individuals accepted protective services.</p> <p>In SFY 2010, approximately 75% of the APS reports alleged abuse, neglect or exploitation that occurred in the adult's own home or another person's home.</p> <p>Twenty-five percent of the APS reports alleged abuse, neglect or exploitation that occurred in other settings such as nursing facilities, assisted living facilities or group homes. Many of these other settings are considered small businesses and these businesses employ professionals who are mandated to report suspected adult abuse, neglect or exploitation. However the proposed changes do not increase the reporting responsibilities for mandated reporters.</p> <p>The proposed changes do not modify processes for reporting or investigating adult abuse or the provision of services to individuals who accept protective services.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be</b></p>	<p>The projected costs to the changes in these regulations are estimated to be \$144,000. This figure primarily reflects the costs associated with the right to review process. It also reflects minimal</p>

<p><b>sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>costs associated with the requirement to mail notifications of intent to request a civil penalty be imposed to mandated reporters certified mail, return receipt requested.</p> <p>The regulatory action does not change any reporting or recordkeeping requirements for small businesses. The regulatory action has no impact on the development of real estate for commercial or residential purposes.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The regulatory action clarifies the content in the regulation and provides for accurate guidance on APS investigations, service provision, and the process to request the imposition of a civil penalty. It also provides the alleged perpetrator with due process by adding the right to request a review of the LDSS investigative findings.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

As the Code of Virginia requires APS and authorizes the Board to promulgate regulations related to APS, no alternatives to the regulatory action were considered. This action clarifies content in the existing regulation.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

As the Code of Virginia requires mandated reporters to report adult abuse, neglect and exploitation and requires LDSS to investigate valid reports of adult abuse, neglect or exploitation and provide services, and authorizes the Board to promulgate regulations related to the adult protective services program, no alternatives to the regulatory action were considered. The regulatory action does not change recordkeeping or reporting requirements.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No public comment was received.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed amendments will have a positive impact on family stability by helping ensure that family members who are elderly or disabled and who are being abused, neglected or exploited or are at risk of abuse, neglect or exploitation receive prompt and appropriate interventions from APS.

The proposed regulatory action will have no impact on the institution of the family. It will have no effect on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not impact marital commitment or disposable family income.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
22 VAC 40-740-10		Provides definitions of the terms used in the regulation.	Adds definition for "ASAPS," the designated statewide APS database and case management system. ASAPS was implemented after the regulation was last reviewed.  Adds definition for "Commissioner."  Adds acronym "DSS" to definition of Department.

			<p>Changes incorrect word "delegated" to correct term "designated" in the definition of "Director."</p> <p>Changes word "found" to "located" in the definition of "Director" located is a more appropriate term to describe an individual.</p> <p>Clarifies definition of "exploitation" to include making the adult the subject of degrading photographs or visual or audio recordings. The definition did not adequately address the use of technology or mechanical equipment to perpetrate exploitation that is sexual in nature.</p> <p>Changes "problems" to "conditions" in the definition of "lacks capacity to consent."</p> <p>Removes term "legally incompetent" as this is not used in the regulation.</p> <p>Changes the term "activity" to "action" in the definition of "mental anguish" as a perpetrator does not need to perform an activity in order to cause an adult pain or distress.</p> <p>Clarifies content by changing "person" to "individual."</p> <p>Clarifies definition of "notification" to describe communication between LDSS or DSS and individuals or agencies.</p> <p>Clarifies that the service plan is a "written" plan.</p> <p>In the definition of "unreasonable confinement" clarifies that medical orders should be "appropriate."</p>
<p>22 VAC 40-15</p>		<p>Describes mandated reporters of adult abuse, neglect or exploitation.</p>	<p>No changes made.</p>
<p>22 VAC 40-740-21</p>		<p>Describes the APS investigation.</p>	<p>Changes "must" to "shall."</p> <p>Clarifies that the APS worker may obtain information from "other sources of information" in addition to the sources listed.</p> <p>Removes the term "narrative" to comport with the data entry requirements in ASAPS.</p> <p>Adds requirement to enter the APS</p>

			<p>assessment in ASAPS to comport with current guidance and the DSS mandate to use ASAPS.</p> <p>Replaces requirement to write a report on a form prescribed by the department with requirement to enter report into ASAPS. This comports with current guidance and the DSS mandate to use ASAPS.</p>
22 VAC 40-740-31		Describes the application for services.	<p>Changes “must” to “shall.”</p> <p>Clarifies section by reorganizing the content.</p> <p>Changes “person” to “representative” to improve clarity and utilize consistent terms in the section.</p>
22 VAC 40-740-40		Describes the assessment and disposition.	<p>Throughout section removes the term “narrative” to comport with the data entry requirements in ASAPS.</p> <p>Changes “must” to “shall.”</p> <p>Adds requirement to describe additional factors about the adult to comport with the data entry requirements in ASAPS.</p> <p>Adds requirement to enter the disposition into ASAPS to comport with data entry requirements in ASAPS.</p> <p>Adds “and accepts” to description of the disposition “needs protective services” as this is the accurate way to describe this disposition.</p> <p>Clarifies the requirements for determining the disposition of needs protective services and accepts by adding “and” and “or” where appropriate.</p> <p>Adds disposition of “invalid” to comport with data entry requirements in ASAPS and with DSS guidance.</p> <p>Changes “notice” to “notification.”</p> <p>Adds requirements for appropriate notification after a facility investigation to comport with DSS guidance.</p> <p>Adds requirement for LDSS to notify the alleged perpetrator of his right to request a review of the LDSS’s investigative findings.</p>

			<p>Changes incorrect term “Adult Protective Services Program” to correct term “local department.”</p> <p>Fixes grammatical error.</p>
	22 VAC 40-740-45	None.	<p>Describes the process by which the alleged perpetrator can request a review hearing of the local department’s investigative findings.</p>
22 VAC 40-740-50		Describes disclosure of APS information.	<p>Throughout section changes incorrect term “chapter” to correct term “section.”</p> <p>Replaces “Department” with “DSS.”</p> <p>Corrects names of state agencies.</p> <p>Adds two state agencies to list of agencies with licensing, regulatory or legal responsibilities.</p> <p>Changes “problems” to “conditions” as this term is more accurate.</p>
22 VAC 40-740-60		Describes opening a case for services.	<p>Changes “must” to “shall.”</p> <p>Clarified the content describing the process of opening a case for services. Prior content was confusing.</p> <p>Includes legal guardian or conservator as individuals who may accept protective services on behalf of an adult as guardians and conservators have this authority.</p> <p>Adds requirement to enter the service plan in ASAPS to comport with ASAPS data entry requirements.</p> <p>Fixes grammatical error.</p> <p>Clarifies confusing content in subsection 2 concerning implementation of the service plan.</p> <p>Clarifies content by changing “person” to “individual.”</p> <p>Clarifies that when LDSS provide services beyond the APS investigation, the services are required to be provided to the extent that federal or state matching funds are made available. Sentence previously implied that LDSS are required to provide services beyond the investigation.</p>
22 VAC 40-740-70		Describes civil penalty for nonreporting.	<p>Moves description of civil penalty fines from Section 80 to Section 70.</p>

			Clarifies that civil penalties for law-enforcement officers are determined by the court of competent jurisdiction.
22 VAC 40-740-80		Describes the process for imposing a civil penalty.	<p>Throughout the section clarifies the guidance on the imposition of a civil penalty by reordering the steps taken in the process.</p> <p>Adds requirement for director to provide supporting documentation to the mandated reporter.</p> <p>Adds requirement that all letters to the mandated reporter shall be mailed certified mail, return receipt requested.</p> <p>Adds a review of the request to impose a civil penalty by the Commissioner’s designee.</p> <p>Adds guidance permitting the mandated reporter to request that the Commissioner review his designee’s decision.</p> <p>Corrects grammatical error.</p>

Throughout the regulation, replaces the terms “local department of social services worker,” “social worker” and “social services worker” with one consistent term “adult protective services worker.”

Throughout regulation, removes term “local department” from term “local department director” as section 10 defines “director” as a “local department director.”